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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.323 OF 2007

The Commissioner of
Income-tax, Aurangabad.....Appellant

Versus

Ambejogai Sahakari Sakhar
Karkhana Ltd.....Respondent

Mr. B.M. Chatterjee with Mrs. P.P.Bhosale and
Shri P.S. Sahadevan, for the Appellant

Mr. S.N. Inamdar with Mr. A.K. Jasani, for the Respondent

CORAM: F.I. REBELLO &
J.P.DEVADHAR,JJ.
DATED: 24th September,2007

P.C.:

. The question of law are formulated in para.15 of the Appeal Memo. Question Nos. I to VII are reframed as under:-

1.Whether the Appellate Tribunal was right in law in holding that provisions of Section 40A(2) (a) are not applicable to a co-operative Society?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the

additional payment over and above the statutory minimum price (SMP) was cane price and not diversion of profit and as such allowable as business expenditure under section 37(1) of the Income Tax Act, 1961?

3. Whether on the facts and in the circumstances of the case cane price/Khodki charges paid by the assessee was not "Bonus" within the meaning of Section 2(4) of the Maharashtra Co-operative Societies Act, 1960 and it was allowable as business expenditure?

They are covered by the judgment of this Court in Income Tax Appeal No.318 of 2007 & other Appeals decided on 14th August, 2007 in the case of Commissioner of Income-tax vs. Manjara Sahakari Sahkar Karkhana Ltd.

2. The question at Serial No.8 is covered by the judgment of this Court in Income Tax Appeal No.273 of 2007 in the case of CIT vs. Samarth Sahakari Sakhar Karkhana Ltd. decided on 17th September, 2007.

. In the light of that Question No.9 does not arise.

3. In so far as question No.10 is concerned, considering the CBDT Circular learned Counsel does not press the same.

4. In the light of the above questions are answered in the affirmative, in favour of the assessee and against the Revenue. Appeal disposed of accordingly.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)